

## REMARKS

This Amendment is in response to the Office Action dated October 14, 2009. Applicant respectfully requests reconsideration and allowance of all pending claims in view of the above-amendments and the following remarks.

### I. PRIORITY CLAIM

Applicant notes that the Office Action Summary PTOL-326 fails to acknowledge in at least boxes 12(a) and 12(a)(1) the priority claim and receipt of the priority documents with respect to foreign application FR02/02992.

The Notice of Acceptance under §371 dated March 7, 2003 indicates the priority documents have been received. Applicant therefore requests that the Office Action summary be corrected to reflect the priority claim and receipt of the priority documents.

Applicant has also submitted a request for a corrected filing receipt, indicating the foreign priority claim.

### II. CLAIM REJECTIONS – 35 USC §101

Claim 16 is rejected under 35 U.S.C. 101 as being directed to allegedly non-statutory subject matter.

With this amendment, claim 16 is cancelled.

### III. CLAIM REJECTIONS – 35 USC § 103

Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Pierre** U.S. Patent No. 7,000,245 in view of **Putzolu** U.S. Patent No. 6,025,140 and **Furukawa** U.S. Publication No. 2002/0071434.

Claims 1-17, 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Pierre** in view of **Putzolu** and **Furukawa** as applied to claims 18-20 above, and further in view of **Okura** U.S. Publication No. 2001/0027468.

### A. File Situation

**A.1** The present disclosure relates to data transmission in the form of data stream(s), each made up of elementary stream units (or packets). An exemplary aim of the disclosure is to optimize processing of these stream units when they are dependent of preceding stream units in the same stream, or in another stream.

In known techniques, an important difficulty is that of synchronization, when the transmission is made in an asynchronous way. In this case indeed, some stream units emitted after can be received before previously emitted ones. In such a case, one cannot process a received unit of stream, if it is dependent on a preceding unit of the stream not yet received.

- A.2** An aspect of the present disclosure proposes a new and inventive approach, by synchronizing the elementary stream units (which are in fact access units). The streams themselves are not synchronized. The synchronisation of the streams themselves is realized, for example, by the “Object Descriptor” of a stream which is dedicated to the description of the scene.

## **B. Position of the Examiner**

Despite two interviews with the Examiner, according to this fifth Office Action, claims are still considered unpatentable. More specifically, the claims are considered as being obvious over **Pierre** (U.S. 7,000,245) in view of **Putzolu** in view of **Furukawa** (U.S. 2002/0071434) in view of **Okura** (U.S. 2001/0027468).

The references are stacked 3- and 4- deep in an effort to find a modification that attempts to read on a pointer as defined in Applicant’s claims. However, a pointer satisfying the limitations of Applicant’s independent claims is still not shown by the references, even if combined.

## **C. Position of the Applicant**

- 1. The Applicant proposes a new clarified set of claims in which the term “stream unit” has been replaced by the term “access unit”.**

Indeed, the Applicant thinks that the Examiner has misunderstood the scope of the claims concerning the term “stream unit”. The Applicant has understood that the Examiner tried to broaden the scope of the claim to identify a document in an attempt to interpreted the documents as disclosing the claims.

The Applicant has decided to clarify its intention by dramatically narrowing the scope of the claims and thus limiting the interpretations that could be made.

The Applicant also proposes a new claim 23 which is more precisely directed to a processing method.

The amendments made to the claims are fully supported by the original specification. Indeed,

- page 25 of the application as filed (the first lines of the appendix), a stream unit is defined as being an access unit (see also, page 16, line 29 to page 18, line 22, for example);
- the “dependency” term is used among the specification, for example on the first page, first paragraph of the application as filed.
- the “designates” term is utilized in claim 12.

**2. The Office Action Rejected claims 1-17 and 21-22 under 35 USC 103(a) as being unpatentable over Pierre in view of Putzolu in view of Furukawa.**

The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.<sup>1</sup> If the Examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of non-obviousness.<sup>2</sup>

To establish a *prima facie case* of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.<sup>3</sup>

Applicant respectfully traverses the § 103 rejection because the office action has not established a *prima facie* case of obviousness.

***a. The cited prior art does not teach or suggest all the claim limitations.***

The cited prior art does not disclose all of the elements and limitations of claim 1.

Indeed, data objects of “**Pierre**” are not equivalent to stream units of the patent application. Specifically, the Applicant will demonstrate that “stream units” (and more particularly access units) cannot be considered as data objects of Pierre.

In fact, in column 8, line 20 to 38, 'Pierre' discloses what the data objects are. In particular, 'Pierre' indicates that data objects are stored as files on a storage medium of mass and / or used directly (column 6).

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<sup>1</sup> MPEP Sec. 2142

<sup>2</sup> Id

<sup>3</sup> Id (emphasis supplied)

Data objects are part of a program (column 4, lines 50 to 62) and are transmitted **cyclically** (column 4, lines 63 to 66) as part of the Carousel (The Carousel is described in column 1, line 31 to 47).

Therefore, the data objects of 'Pierre' cannot be stream units of the invention, nor that the streams units of the invention can be regarded as a kind of 'superset' of data objects of 'Pierre'.

In fact, in the present application, a stream unit does not contain a sound or a picture in its entirety as described in 'Pierre'.

The interpretation which is made by the Examiner does not therefore seem appropriate on this first point. So, 'Pierre' does not meet all the limitations of the claim except "wherein said pointer is a dependency pointer..." as argued by the Examiner.

Indeed, as "Pierre" does not explicitly disclose that a "data object" is an "access unit", 'Pierre' does not meet the limitation "each of said stream or streams being made of access units". Furthermore, the stream units as claimed are not transmitted **cyclically** as part of a Carousel.

**b. The Office Action has not provided a suggestion or motivation to combine the cited references.**

Although evidence of a motivation to combine need not be found in the prior art reference themselves, if it is found in the knowledge of one of ordinary skill in the art or, in some cases, from the nature of the problem to be solved, the Office Action must do more than simply discuss the ways that the multiple prior art references can be combined to read on the claimed invention. Rather, the Office Action must point out "specific information in [the two references] that **suggest** the combination."<sup>4</sup> "The Board [must] explain what specific understanding or technological principle within the knowledge of one of ordinary skill in the art would have suggested the combination".<sup>5</sup>

In *KSR Int'l Co. v. Teleflex Inc. et.al.*<sup>6</sup>, the Court re-affirmed that:

"Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to

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<sup>4</sup> See *Dystar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1366, 80 USPQ2d

<sup>5</sup> *Id.* at 1367 (citing *in re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998))

<sup>6</sup> *KSR Int'l v. Teleflex, Inc.*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007)

support the legal conclusion of obviousness”.<sup>7</sup>

Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.<sup>8</sup>

Furthermore, even if the one of ordinary skill in the art would have combined ‘Pierre’ and ‘Putzolu’, he wouldn’t have obtained the limitations of claim 1 as argued in the Office Action. Indeed, the disclosure of ‘Putzolu’ is based on RTP protocol (*see col.3, line 33*). This protocol is well known from the one skilled in the art and is using a PDU sequence number for reordering the packets.

Even if ‘Putzolu’ in Fig. 2. Putzolu also discloses (col.5, lines 1-4, 28-33, 38-44) that the dependency information included in the descriptor defines a list of media streams (not stream units or access units) needed for delivering the given media stream, the Examiner has not demonstrated *why it would have been obvious to one of the ordinary skill in the art at the time of the invention to modify Pierre’s system by using descriptor of a stream unit for pointer of Putzolu.*

Indeed such a modification is not obvious. ‘Pierre’ discloses data objects which contain pictures, sound etc. Thus, the Data Objects of ‘Pierre’ are not packets or units. As the Examiner describes it, in ‘Putzolu’, the dependencies between streams (and not stream units) are described via ‘data packets’.

If the one of ordinary skill in the art would have wanted to modify ‘Pierre’, to *describe dependencies among the data packets so the arrangement of a media presentation to be varied in response to information that becomes available as the presentation progresses* (‘Putzolu’, col.1, lines 55-60) then he wouldn’t have obtained the limitation expected by the Examiner.

The one of ordinary skill in the art would rather have obtained a system in which the data objects of ‘Pierre’ would have to be ‘cut/divided’ in a set of RTP packets, such as taught by ‘Putzolu’. Indeed, ‘Putzolu’ discloses that the stream is divided into RTP packets (not any packet of any protocol). Thus the streams of ‘Pierre’ would have been cut into RTP packet, where, as described in col.5, lines 1-4, 28-33, 38-44 of ‘Putzolu’, the dependency information included in the RAP descriptor (**not any descriptor**) defines a list of media streams needed for delivering the given media stream.

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<sup>7</sup> *Id*

<sup>8</sup> *Id*

The proposed modification would not have some dependencies on stream **units**.

Finally, despite the above results, even if the one of ordinary skill in the art continues modifying its previous system in view of **Furukawa**, he would not have obtained all the limitations and features of the claims.

Indeed, the pointer which is featured on paragraph §0063 of **Furukawa** is not a pointer, as such, or as recited in Applicant's claims. Furthermore, **Furukawa** uses the term 'urgent pointer'. So the one skilled in the art would have asked '**what is an urgent pointer?**'

Referring to the standard defining the header package 'TCP' (RFC793), we have a definition of this field 'urgent pointer':

TCP also provides a means to communicate to the receiver of data that at some point further along in the data stream than the receiver is currently reading there is urgent data. TCP does not attempt to define what the user specifically does upon being notified of pending urgent data, but the general notion is that the receiving process will take action to process the urgent data quickly.

Read more: <http://www.faqs.org/rfcs/rfc793.html#ixzz0Zqg20ZSF>

Thus, the one of ordinary skill in the art would have obtained a system in which the TCP packets (not the RTP ones of 'Putzolu' and furthermore not the 'data objects' of 'Pierre' would have an urgent pointer, for which, as told in the RFC793, there is no "*attempt to define what the user specifically does upon being notified of pending urgent data*".

Even further, such an "**urgent pointer**" is not a pointer that, "that points to at least one other access unit of said stream or of another stream that may have been received previously in the terminal," as recited in Applicant's claim 1.

It is important to note that neither **Putzolu** nor **Furukawa** discloses a pointer to another stream unit. So if the Examiner is relying on **Furukawa** to disclose a pointer that is distinct from a sequence number, that pointer would not point to another stream unit, as recited in Applicant's claims. Rather, it would constitute an 'urgent pointer' as defined above.

Thus, the proposed combination of Furukawa's "urgent pointer" would not satisfy the elements of Applicant's claims and is therefore not relevant either separately or in

combination with the other references.

*c. Conclusion:*

The Applicant has demonstrated that the combination of documents proposed by the Examiner does not lead to the invention as claimed in claim 1 (or in the other independent claims for similar reasons).

**3. The Examiner has not applied the test of *Graham v. John Deere Co.*<sup>9</sup> The MPEP requires the Examiner to do so.<sup>10</sup> However, the Examiner has made no finding of the level of ordinary skill in the art.<sup>11</sup>**

The Federal Circuit routinely vacates conclusions of obviousness when the fact finder failed to make *Graham* factor findings.<sup>12</sup> This is especially so when the fact finder makes conclusory statements that "'do not fulfill the agency's obligation' to explain all material facts relating to a motivation to combine."<sup>13</sup>

The Supreme Court has re-affirmed this need:

Often, it will be necessary for a court to look to ... the background knowledge possessed by a person of ordinary skill in the art ... in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit.<sup>14</sup>

For the above reasons, Applicant respectfully requests the allowance of all claims and the issuance of a Notice of Allowance.

**D. Conclusion**

- 1** “**Pierre**” is not relevant toward amended claim 1 and its dependent claims of the present patent application because the data objects described in “**Pierre**” are not equal or equivalent to the streams unit (or the access units) of the Applicant’s claims.

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<sup>9</sup> 383 US 1 (1966)

<sup>10</sup> MPEP §2141

<sup>11</sup> MPEP §2141.03

<sup>12</sup> *Dystar*, 464 F.3d 1366 and cases cited therein.

<sup>13</sup> *Id.*

<sup>14</sup> KSR, 550, U.S.\_\_\_\_(2007)

- 2     **“Pierre”**, in view of **“Putzolu”**, is not relevant toward amended claim 1 and the dependent claims of the present patent application because to obtain the invention, it is necessary to:
- Detect the approach of **“Pierre”** was not adequate;
  - Understand that it is desirable to take into account the distinct streams, in order to simplify the processing of decoding;
  - Decide to insert pointers in the stream units themselves to allow synchronising stream units with other stream units of another stream previously received.

This is not described nor disclosed in **“Putzolu”** nor in **Furukawa**.

- 3     **“Furukawa”** does not disclose a pointer “that points to at least one other access unit of said stream or of another stream that may have been received previously in the terminal,” as recited in Applicant’s claim 1.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

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